

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9312 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SUBHASHBHAI RAMJIBHAI AMIN

Versus

STATE OF GUJARAT

Appearance:

MR JR NANAVATY for MS VARSHA B TIWARI for Petitioners
MR PS PATEL for MR HM BHAGAT for Respondent No. 1
NOTICE SERVED BY DS for Respondent No. 2, 3, 4

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 24/02/99

ORAL JUDGEMENT

Rule. Mr. P.S.Patel, learned counsel appearing for Mr. H.M.Bhagat waives service of rule.

2. In this petition under Articles 226 and 227 of the Constitution, the petitioners have challenged the notices dated 18.11.1996 and 20.11.1996 (Annexures A/1 & A/2 respectively) issued by the Collector of Stamps under section 32A of the Bombay Stamps Act, 1958 and also the orders dated 9.4.1997 (Annexures G/1 and G/2 respectively) calling upon the petitioners to pay the deficit stamp duty of Rs. 1,52,496/- and Rs. 59,759/- respectively.

3. By the impugned show cause notices, the Collector of Stamps for Kheda, Panchmahals and Nadiad Region had called upon the petitioners to show cause why the value of the property mentioned in the two sale deeds in question at Rs. 68,320/- and Rs. 1,75,340/- should not be considered as Rs.6,17,100/- and 15,87,850/- and to pay the deficit stamp duty on that basis. The petitioners submitted their applications dated 23.12.1996 pointing out that the show cause notices did not give the requisite particulars as required by Rule 4 of the Bombay Stamp (Determination of Market Value of Property) Rules, 1984 (hereinafter referred to as "the Rules") which are produced at page 67 of the paper book. The authority, however, did not accede to the said request and despite repeated reminders sent by the petitioners, did not furnish the requisite particulars on the basis of which the show cause notices were issued. Ultimately, two separate orders dated 9.4.1997 (Annexure G/1 and G/2) were passed by the authority calling upon the petitioners to pay the deficit stamp duty as stated above.

4. The petitioners filed two separate appeals challenging the aforesaid orders and also filed applications for stay of the execution of the impugned orders. By order dated 2.12.1997 (Annexure "C"), the appellate authority, however, granted conditional stay directing the petitioners to deposit 25% of the amounts required to be paid by the petitioners under the impugned orders. The applications of the petitioners for exemption from payment of any duty as demanded by the impugned orders were, however, not granted. The petitioners initially filed this petition only challenging the orders at Annexure "C" by which the appellate authority had declined to grant unconditional stay or exemption from deposit of 25% of the duty under section 32B of the Stamp Act. However, thereafter, by

Civil Application No. 1061 of 1999, the petitioners prayed for amendment of the petition by challenging the show cause notices as well as the orders dated 9.4.1997. The amendment has been granted and the petitioner has been heard on merits.

5. At the hearing of this petition, Mr. J.R.Nanavaty, the learned counsel appearing for the petitioners submitted that as per rule 4 of the Rules, the Collector of the District is empowered to examine any information, records and evidence which he may obtain from any public officer or an authority under the Central Government, State Government or any local authority or any member of public and inspect or empower any officer under him to inspect the property after due notice to the parties concerned. Thereafter, sub rule (2) of rule 4 of the Rules makes the following provision for issuance of notice to the person who is liable to pay the stamp duty in respect of such instrument. Sub rule (2) and (3) of rule 4 of the rules read as under :

4. (2) After examining the said information, records and evidence, if any, before him, Collector of the District shall issue a notice showing the basis on which true market value of property and proper duty payable thereon has been provisionally determined by him, to every person to whom according to the provisions of section 30 is liable to pay stamp duty in respect of such instrument requiring such person to submit within 15 days from the date of the service of the notice upon such person, his representation in writing alongwith all the evidence in support of such representation.

(3) The Collector of the District shall after considering the representation, if any, received by him under sub rule (2) pass an order determining the true market value and the proper payable on the instrument."

[emphasis supplied].

It is submitted that in the instant case, the show cause notices at annexure A/1 and A/2 did not give any particulars as required by sub-rule (4) of rule 4 of the Rules. The photostat copy of the notices dated 18.11.1996 and 20.11.1996 (page 43 and 45 of the paper

book) clearly show that two blank lines in the proforma notices were left blank by the authority issuing notices and the notices merely mentioned the market value determined by the Collector of Stamps without giving any reasons or indicating any basis which was considered by the authority for making prima facie determination of the market value of the property in question. In spite of the various applications and reminders sent by the petitioners which are at annexures B,C,D,E and F to the petition between 23.12.1996 and 9.4.1997, the Collector of Stamps or his office did not supply any information or documents on the basis of which prima facie determination of the market value of the property in question was made by the Collector. Mr. Nanavaty further submits that in spite of the non compliance with the aforesaid request made by the petitioners, in the impugned orders, the authority has mentioned that the representative of the petitioners had not remained present in spite of various notices given and that the petitioners had also not produced any material in support of their case. It is submitted by Mr. Nanavaty that both the provisions of sub rule (2) of rule 4 of the rules as well as the principles of natural justice require that the petitioners should have been supplied information on the basis of which the provisional determination of the market value of the property in question was made by the Collector before issuance of the show cause notices. Since that was not done, the impugned orders are vitiated by breach of the principles of natural justice and, therefore, the petitioners are not bound to first avail of the alternative remedy of appeal before the Chief Controlling Revenue Authority. It is submitted that in the appeal also, the petitioners will still be handicapped in arguing their case as neither in the show cause notice nor in the final order, the Collector of Stamps has disclosed the reasons for making provisional or final determination of the market value of the property in question and, therefore, remedy of appeal will not serve any useful purpose. He, therefore, does not press for relief (B) by which the petitioners had challenged the order declining to grant exemption from deposit of 25% of the duty during pendency of the appeal.

6. In reply, Mr. P.S.Patel, the learned counsel appearing for the respondents has submitted that when the petitioners have already filed the appeal before the Chief Controlling Revenue Authority, they must exhaust the statutory alternative remedy before invoking the extra ordinary jurisdiction of this Court under Article 226 or 227 of the Constitution.

7. Having heard the learned counsel for the parties, it appears to the Court that while normally the Court would require a party to avail of the alternative remedy of appeal provided under the Act and pursue the appeal filed earlier, however, in the facts and circumstances of the case, there is a considerable force in the argument advanced by Mr. Nanavaty that the Collector of Stamps did not give any particulars or any information on the basis of which the market value of the property in question was determined either on provisional basis or finally and, therefore, the petitioners are at loss even in prosecuting their appeal, apart from the question whether the appellate authority should have granted exemption from payment of 25% of the deficit duty demanded by the impugned order dated 9.4.1997. In view of the provisions of sub rule (2) of rule 4 of the Rules, it is abundantly clear that it is for the authority to first show the basis on which the true market value of the property and proper duty payable thereon has been properly determined by the Collector and the notice must disclose this basis. Otherwise, issuance of the notice and hearing before the Collector or appellate authority would be a mere formality as the citizen will have no material to controvert or even to deal with.

8. As per the settled legal position, an alternative remedy is not an absolute bar to the exercise of the writ jurisdiction under Article 226 and/or 227 of the Constitution if there is patent breach of the principles of natural justice and serious prejudice is caused by such breach. In the facts and circumstances of the case, alternative remedy of appeal would not be an effective remedy as discussed above. It would, therefore, be just and proper to quash and set aside the impugned orders dated 9.4.1997 (Annexure G/1 and G/2 respectively) and the consequential recovery notice at Annexure "E". While quashing the aforesaid orders, liberty is reserved to the Collector of Stamps to supply to the petitioners the basis on which the market value of the property has been provisionally determined by the Collector as mentioned in column-2 of the table at the bottom of the impugned show cause notices at Annexures A/1 and A/2 and after showing the basis thereof to the petitioners in writing, the Collector of Stamps shall be at liberty to proceed further in the matters in accordance with law.

9. In view of the aforesaid liberty granted to the authority, it is not necessary to consider the petitioners' challenge to the legality of the impugned show cause notices annexure A/1 and A/2 respectively. It will be open to the petitioners to raise all available

contentions before the authority hearing the notices.

10. The petition is accordingly allowed. The impugned orders dated 9.4.1997 at ANNexure G/1 and G/2 and the consequential recovery notice dated 10.12.1997 at Annexure "E" are hereby quashed and set aside with liberty to the authority to proceed further in the matter in accordance with law and in light of the observations made in this judgment.

11. Rule is made absolute accordingly with no order as to costs.

24.2.1999. (M.S.Shah,J.)

Vyas